

specifically and in detail each allegation of the complaint unless the person complained of is without knowledge, in which case, his or her answer shall so state and the statement shall operate as a denial. Allegations of fact not denied or controverted shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered and shall, in the absence of a reply, be deemed to be controverted.

§ 302.208 Default.

Failure of a respondent to file and serve an answer within the time and in the manner prescribed by this part shall be deemed to authorize the Department, in its discretion, to find the facts alleged in the complaint incorporated in or accompanying the notice instituting an enforcement proceeding to be true and to enter such orders as may be appropriate without notice or hearing, or, in its discretion, to proceed to take proof, without notice, of the allegations or charges set forth in the complaint or order, provided that the DOT decisionmaker or administrative law judge may permit late filing of an answer for good cause shown.

§ 302.209 Reply.

The DOT decisionmaker (or the administrative law judge) may, in his or her discretion, require or permit the filing of a reply in appropriate cases, otherwise no reply shall be filed.

§ 302.210 Parties.

The parties to an enforcement proceeding shall be the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, the respondent, any person whose formal complaint alleged violations that were later covered by the notice of enforcement, and any other person permitted to intervene under § 302.15.

§ 302.210a Consolidation of proceedings.

The DOT decisionmaker or Chief Administrative Law Judge, upon his or her own initiative, or upon motion of any party, may consolidate for hearing or for other purposes, or may contemporaneously consider, two or more enforcement proceedings which involve

substantially the same parties, or issues which are the same or closely related, if he or she finds that such consolidation or contemporaneous hearing will be conducive to the dispatch of business and to the ends of justice and will not unduly delay the proceedings.

§ 302.211 Prehearing conference.

A prehearing conference may be held in an enforcement proceeding whenever the DOT decisionmaker or the administrative law judge believes that the fair and expeditious disposition of the proceeding requires one. If a prehearing conference is held, it shall be conducted in accordance with § 302.23.

§ 302.212 Admissions as to facts and documents; motions to dismiss and for summary judgment.

(a) At any time after answer has been filed, any party may file with DOT and serve upon the opposing side a written request for the admission of the genuineness and authenticity of any relevant documents described in and exhibited with the request or for the admission of the truth of any relevant matters of fact stated in the request with respect to such documents. Each of the matters of which an admission is requested shall be deemed admitted unless within a period designated in the request, not less than ten (10) days after service thereof, or within such further time as the DOT decisionmaker or the administrative law judge may allow upon motion and notice, the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he or she cannot truthfully either admit or deny such matters. Service of such request and answering statement shall be made as provided in § 302.8. Any admission made by a party pursuant to such request is only for the purposes of the pending proceeding, or any proceeding or action instituted for the enforcement or any order entered therein, and shall not constitute an admission by him or her for any other purpose or be used against him or her in any other proceeding or action.

§ 302.213

(b) At any time after answer has been filed, any party may file with the DOT decisionmaker or the administrative law judge a motion to dismiss or a motion for summary judgment, including supporting affidavits. The procedure on such motions shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C.), particularly Rules 6(d), 7(b), 12, and 56, except that answers and supporting papers to a motion to dismiss or for summary judgment shall be filed within 7 days after service of the motion.

(c) Parties may petition the DOT decisionmaker to review action by the administrative law judge granting summary judgment or dismissing an enforcement proceeding under the procedure established for review of an initial decision in § 302.28.

§ 302.213 Hearing.

After the issues have been formulated, whether by the pleadings or otherwise, the administrative law judge or the DOT decisionmaker shall give the parties reasonable written notice of the time and place of the hearings.

§ 302.214 Appearances by persons not parties.

With consent of the administrative law judge or the DOT decisionmaker, appearances may be entered without request for or grant of permission to intervene by interested persons who are not parties to the proceeding. Such persons may, with consent of the administrative law judge or the DOT decisionmaker, cross-examine a particular witness or suggest to any party or counsel therefor questions or interrogations to be propounded to witnesses called by any party, but may not otherwise examine witnesses and may not introduce evidence or otherwise participate in the proceeding. However, such persons may present to both the administrative law judge and the DOT decisionmaker an oral or written statement of their position on the issues involved in the proceeding.

§ 302.215 Settlement of proceedings.

(a) The Deputy General Counsel and the respondent may agree to settle all or some of the issues in an enforcement proceeding at any time before a final

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decision. The Deputy General Counsel shall serve a copy of any proposed settlement on each party and shall submit the proposed settlement to the administrative law judge for approval. The submission of a proposed settlement shall not automatically delay the proceeding.

(b) Any party to the proceeding may submit written comments supporting or opposing the proposed settlement within 10 days from the date of service.

(c) The administrative law judge shall approve the proposed settlement, as submitted, if it appears to be in the public interest, or otherwise shall disapprove it.

(d) Information relating to settlement offers and negotiations will be withheld from public disclosure if the Deputy General Counsel determines that disclosure would interfere with the likelihood of settlement of an enforcement proceeding.

§ 302.216 Evidence of previous violations.

Evidence of previous violations by any person or of any provision of the act or any requirement thereunder found by DOT or a court in any other proceeding or criminal or civil action may, if relevant and material, be admitted in any enforcement proceeding involving such person.

§ 302.217 Motions for immediate suspension of operating authority pendente lite.

All motions for the suspension of the economic operating authority of an air carrier during the pendency of proceedings to revoke such authority shall be filed with, and decided by the DOT decisionmaker. Proceedings on the motion shall be in accordance with § 302.18. In addition, the DOT decisionmaker shall afford the parties an opportunity for oral argument on such motion.

§ 302.218 Modification or dissolution of enforcement actions.

Whenever any party to a proceeding in which an order of DOT has been issued pursuant to section 1002(c) of the Act, or an injunction or other form of enforcement action has been issued by